

Agency Action

OW/OWOW/OWCD/PDJB
Tier 2 Regulation (proposed)

SAN: Not Assigned
RIN: Not Assigned

Action Information

TRACKER Status: Draft
Working Title: CWA 404 Assumable Waters Regulation
Full Title:
Commencement: Not Yet Approved

Tiering:

Instructions: Propose Tier 1, Tier 2 or Tier 3. If you are not sure which to choose, seek help from your AAship's Regulatory Steering Committee (RSC) member (who is listed on the ADP Library site: [[HYPERLINK "http://intranet.epa.gov/adplibrary/"](http://intranet.epa.gov/adplibrary/)]) or from the ADP guide book titled *EPA's Action Development Process: Guidance for EPA Staff on Developing Quality Actions*, which is accessible from the ADP Library.

Current answer: Proposed as Tier 2

Tier Justification

Instructions: Explain why you selected the Tier which you selected. Your RSC member or ADP guide book can help you.

Current answer: EPA will provide clarity on determining which waters the state/tribe has CWA Section 404 permit responsibilities, and for which waters the USACE retains CWA 404 permit responsibility, under an approved state/tribal program. EPA convened a FACA committee to provide recommendations on how EPA could provide clarity. The rule will consider the recommendations from the FACA that had members from industry, NGOs, states, tribes, academia and other federal agencies. The rule will also include technical fixes and updates to the regulations. There is no new science and no new burden to states.

Regulatory Reporting

Reg Agenda:

Question: Should this action appear in EPA's Semiannual Regulatory Agenda?

Instructions: Answer Yes or No. If no, provide a rationale.

Current answer: Yes

Current Rationale:

Reg DaRRT:

Question: Should this action appears on EPA's Reg DaRRT website ([[HYPERLINK "http://www.epa.gov/regdarrrt"](http://www.epa.gov/regdarrrt)])?

Instructions: Answer Yes or No. If no, provide a rationale above.

Current answer: Yes

Action POCs

Primary POC: Kathy Hurd (OW/OWOW);
Secondary POC: Ruth Chemerys (OW/OWOW)
Public POC:

Instructions: The Primary POC is typically the workgroup chair or leader for the action. The Secondary POC is his/her back-up. Define a Public POC above if you want someone other than the Primary and/or Secondary POC to answer questions from the public (e.g., for some OCSPP actions, the TSCA Hotline will be entered as the Public POC).

Internal Abstract

Instructions: This Internal Abstract will not be shared outside of the agency.

CWA Section 404(g) addresses requirements for implementation and EPA oversight of state and tribal CWA Section 404 permitting programs. CWA 404(g) allows for states and tribes to assume administration of the dredge and fill permit program for certain waters. In this rule, EPA will provide clarity on which waters a state/tribe assumes CWA 404 permitting authority and for which waters the USACE retains this responsibility. Specifically, this effort will address the states' request to provide clarity on this issue enabling them to assess and determine the scope of an approved program, removing a state identified barrier to assuming administration of the CWA Section 404 program. In providing clarity on this issue, EPA will consider the recommendations from the Assumable Waters FACA, convened by OWOW to consider this issue. This rule will also update the 1988 regulations with current citations and other technical fixes.

External Abstract

Instructions: This External Abstract, used for public consumption, will be available on both the Action form and the associated Reg Reporting form.

CWA 404(g) allows for states and tribes to assume administration of the dredge and fill permit program for certain waters. States and tribes have requested EPA provide clarity on which waters a state/tribe assumes CWA 404 permitting authority and for which waters the USACE retains this responsibility. Lack of clarity on assumable waters has been identified as a barrier to state and tribal efforts to develop and assume a CWA 404(g) program as it hampers efforts to assess and determine the scope of an approved program. EPA convened a FACA comprised of state, tribal and other stakeholder representatives charging them with providing recommendations on how EPA could provide clarity on this issue. This rule will provide clarity on which waters are assumable after consideration of the FACA recommendations as well as provide needed technical corrections and updates to the 1988 regulations.

OMB Significance

Proposed OMB Significance:

Question 1: With what you know right now, do you anticipate that this action will be Significant, Non-Significant, as defined in Executive Order 12866, and therefore will undergo/not undergo OMB Review? Or, do you believe this action is Exempt according to EO 12866 or for some other reason?

Instructions: Answer Significant, Non-Significant or Exempt.

Current answer: Non-Significant

Question 2: If you proposed Non-Significant, provide a rationale.

Current Non-Significant Rationale: CWA 404(g) allows for states and tribes to assume administration of the dredge and fill permit program for certain waters. This rulemaking will assist states and tribes seeking to assume the CWA Section 404 program. Specifically, this effort will address the states' request to provide clarity on this issue enabling them to assess and determine the scope of an approved program. Only those states and tribes seeking assumption will be affected by the program. The rule will have no significant new use of science or economics. The rule will include consideration of recommendations provided by a FACA convened to address the question of which waters are assumable.

If you proposed Exempt, pick one from the following list:

- Rule of Particular Applicability
- Approval of SIPs
- Air Quality Designations
- Approval of Equivalent Methods for Air Quality Monitoring
- Approval of NSPS, NESHAP, PSD Delegations
- Pesticide Tolerance
- TSCA Test Marketing Exemption
- FIFRA Registration Standards
- Approval of State Water Standard
- Approval of State UIC Programs
- NPDES Delegations
- Deletions from 307(a) List of Toxic Chemicals
- Approval of State Solid Waste Management Plans
- Approval of Delisting Petitions under RCRA
- Other

Current Exempt Reason:

If you chose Other from the previous list, please provide an explanation:

Current Exempt Explanation:

Stages & Milestones

Deadlines

Question: Specify deadlines that affect your action's schedule.

Instructions: Specify the type of deadline(s) by completing the following information next to the appropriate Deadline Type:

- Specify the date of the deadline(s).
- Specify what Stage(s) the deadline(s) apply to (i.e., NPRM and/or Final).
- Specify the Milestone the deadline(s) apply to (i.e., Signature or FR Publication).
- Describe the judicial decision, statute, etc. that governs the deadline.

Deadline Type	Stage(s)	Milestone	Description
Statutory			
Court Order			
Consent Decree			
Settlement Agreement			
Promise to Court			
Target			
Specify (other)			

Current answer:

None

Stages:

Instructions: Stages vary by the type of action you are working on, and are too voluminous to list here. Work with your AAship's Regulatory Steering Committee (RSC) member (who is listed on the ADP Library site: [[HYPERLINK "http://intranet.epa.gov/adplibrary/"](http://intranet.epa.gov/adplibrary/)]) to determine what Stages to include.

Current answer:

All Milestones:

Instructions: Milestones vary by the type of action you are working on and the Tier level of your action; they are too voluminous to list here. Work with your AAship's Regulatory Steering Committee (RSC) member (who is listed on the ADP Library site: [[HYPERLINK "http://intranet.epa.gov/adplibrary/"](http://intranet.epa.gov/adplibrary/)]) to determine what Milestones to include.

Current answer:

Workgroup

Requested AAship Participation:

Instructions: Core offices (OECA, OGC, OP, ORD) should participate on Tier 1 and 2 actions. OP should also participate on Tier 3 actions. Please request AAship participation accordingly and enter comments below if desired.

Current answer:

OGC, ORD, OECA, OP

Comments: *We welcome ORD's participation; however, since this action does not involve science, ORD is not key to this rulemaking effort. We have a regional working group that meets monthly on this subject area. They will be engaged in this effort. Specifically, we have representatives from R4 who have requested active engagement and expect and others will likely assist. We will solicit from the regional water programs for their participation on the workgroup.*

Issues, Impacts, and Development

Science Issues:

Question 1: Please identify if there are any science issues associated with this action (e.g., risk assessment, benefits analysis or technology assessment).

Instructions: Answer Yes, No or Undetermined.

Current answer: No

Question 2: If yes, describe the science issue(s).

Current answer:

Peer Review:

Question: Will this action or supporting documentation go through Peer Review?

Instructions: Answer Yes, No or Undetermined. If yes, it must be entered in the Science Inventory Database.

Current answer: *No there are no science issues associated with this rule.*

Major Issues and Cross-Media Concerns:

Question: Please identify anticipated and/or probable major issues, including pollution prevention alternatives and cross-media issues.

Current answer: No

Human Health:

Question: Will this action address/concern human health impacts?

Instructions: Answer Yes, No or Undetermined. If Yes, provide an explanation.

Current Answer: No

Children's Health:

Question: Is this action likely to address an adverse impact on childhood lifestages including prenatal (via exposure to women of childbearing age)? (Reg DaRRT)

Instructions: Answer Yes, No or Undetermined. If Yes, indicate if the likely impact is related to Exposure and/or Toxicity, and provide an explanation.

Current Answer: No

Environmental Justice:

Question 1: Does this action involve a topic that is likely to be of particular interest to or have particular impact upon minority, low-income or indigenous populations, or tribes? (Reg DaRRT)

Instructions: Answer Yes, No or Undetermined. If yes, select from options below and provide an explanation. Selecting No means that this action is not likely to be of particular interest to these populations or tribes. Selecting Undetermined means that, given the information available at this time, the Agency does not know if these populations or tribes will be particularly interested in this action.

Current Answer: No

Question 2: If you answered Yes to the previous question, place an "X" to the left of at least one:

	The action is likely to impact the health of these populations.
	The action is likely to impact the environmental conditions of these populations.
	The action is likely to present an opportunity to address an existing disproportionate impact on these populations.
	The action is likely to result in the collection of information or data that could be used to assess potential impacts on the health or environmental conditions of these populations or tribes.
	The action is likely to affect the availability of information to these populations or tribes.
	Other reasons. Explain.

Current Answer:

Comments:

Levels of Government Affected:

Question 1: Are any levels of government affected? (Reg DaRRT)

Instructions: Answer Yes, No or Undetermined. If Yes, answer the next question.

Current Answer:Yes

Question 2: Levels Affected

Instructions: Place an "X" to the left of at least one.

X	Federal
X	State
	Local
X	Tribal
	Small

Current Answer:

Federal
State
Tribal

Question 3: Describe the type of effects.

Instructions: Place an "X" in at least one of the columns for each affected government level.

Current answer:

	Likely to be involved in implementation	Likely to be regulated
Federal	Yes	Yes
State	Yes	Yes
Local		
Tribal	Yes	Yes
Small		

Note: Deliberative...Not Agency Policy...Do Not Quote, Cite or Distribute

